

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 77-1273

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CURTIS ROOSEVELT DAVIS,

Defendant-Appellant.

Appeal from the United States District Court  
For the Eastern District of New York

---

DEFENDANT-APPELLANT'S APPENDIX

---

PETER A. PASSALACQUA  
Attorney for Defendant-Appellant  
32 Court Street  
Brooklyn, New York 11201  
(212) 852-2634

PAGINATION AS IN ORIGINAL COPY



TABLE OF CONTENTS

|                          | Page |
|--------------------------|------|
| Docket Entries .....     | A-1  |
| Indictment .....         | A-5  |
| Charge To The Jury ..... | A-7  |

|                           |  |                       |  |                    |  |                     |  |
|---------------------------|--|-----------------------|--|--------------------|--|---------------------|--|
| JUDGE MAGISTRATE Assigned |  | U.S. DISTRICT COURT   |  | Case Filed Mo. Day |  | Platt, J. A-1       |  |
| 207 1                     |  | Curtis R. Davis       |  | 4 1                |  | 77 1                |  |
| ELONY Fel                 |  | (LAST, FIRST, MIDDLE) |  | No. of Defs        |  | Yr. Docket No. Det. |  |
| X District Office         |  |                       |  | 1                  |  | 1                   |  |

|                               |                                                                                |                      |
|-------------------------------|--------------------------------------------------------------------------------|----------------------|
| U.S. TITLE SECTION<br>18:1709 | OFFENSES CHARGED<br>Did embezzle Social Service Checks<br>and did possess same | ORIGINAL COUNTS<br>2 |
|-------------------------------|--------------------------------------------------------------------------------|----------------------|

|                                 |                                                                                                                         |                                                        |                                                                                                                        |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| II. KEY DATES & INTERVALS       |                                                                                                                         | SUPERSEDING COUNTS                                     |                                                                                                                        |
| ARREST or<br>U.S. Custody Began | INDICTMENT X<br>Information <input type="checkbox"/><br>High Risk Date<br>4-1-77                                        | ARRAIGNMENT<br>4-22-77<br>1st Plea<br>II<br>Final Plea | TRIAL<br>Trial Set For<br>4/25/77<br>Voor Dire <input type="checkbox"/><br>Trial Began<br>II<br>Trial Ended<br>4/28/77 |
| Summons Served                  | Indict. Waived <input type="checkbox"/><br>Superseding <input type="checkbox"/><br>Indict/Info <input type="checkbox"/> |                                                        |                                                                                                                        |
| First Appearance<br>2-25-77     | In Charging District                                                                                                    |                                                        |                                                                                                                        |

|                        |                                                                                                                                                                                                                                                |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SENTENCE               |                                                                                                                                                                                                                                                |
| Disposition of Charges | <input type="checkbox"/> On All Charges<br><input type="checkbox"/> On Lesser * Offense(s)<br><input type="checkbox"/> Dismissed: <input type="checkbox"/> WOP: <input type="checkbox"/> WP<br><input type="checkbox"/> On Government's Motion |

|                    |                                                                 |            |                                                                                                                                                                                                          |
|--------------------|-----------------------------------------------------------------|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MAGISTRATE         |                                                                 | OUTCOME    |                                                                                                                                                                                                          |
| Search Warrant     | DATE                                                            | INITIAL/NO | <input type="checkbox"/> DISMISSED<br><input checked="" type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT<br><input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW |
| Summons            |                                                                 |            |                                                                                                                                                                                                          |
| Arrest Warrant     |                                                                 |            |                                                                                                                                                                                                          |
| COMPLAINT          | 2-25-77 VAC/07AA                                                |            | VAC-07AA                                                                                                                                                                                                 |
| OFFENSE (in Court) | Theft of mail while officially employed. T-18 USC Section 1709. |            |                                                                                                                                                                                                          |

|                        |                                                                                 |
|------------------------|---------------------------------------------------------------------------------|
| U.S. Attorney or Asst. | ATTORNEYS                                                                       |
| Russo                  | Legal Aid Society.<br>Peter Passalacqua<br>32 Court St., Bklyn, NY.<br>852-2634 |

|             |                                                                                                                                                                                                                                                 |                  |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| PROCEEDINGS |                                                                                                                                                                                                                                                 | EXCLUDABLE DELAY |
| DATE        | (DOCUMENT NO.)                                                                                                                                                                                                                                  | (a) (b) (c) (d)  |
| 4-1-77      | Before CHREIN J - Indictment filed                                                                                                                                                                                                              |                  |
| 4/12/77     | Letter filed to Judge Platt from Richard A. Rehbock dtd 4/7/77, re: relieving Legal Aid as counsel for deft and appointing Mr. Davis to represent deft.                                                                                         |                  |
| 4-12-77     | By Platt, J- Order filed appointing counsel for deft.                                                                                                                                                                                           |                  |
| 4-12-77     | Before Platt, J - case called - deft & atty present - 2 4-11-77 G On motion of Legal Aid Society court relieves aforesaid 4-19-77 and appoints Peter Passalacqua as counsel - adjd to 4-19-77 to set a date for trial - bail \$5,000 PRB contd. |                  |
| 4-14-77     | By Platt, J- Order filed appointing counsel for deft.                                                                                                                                                                                           |                  |
| 4.19.77     | Before Platt, J.- Case Called. Counsel present. Trial set down for 4.25.77 at 10:00 A.M. Adj. to 4.22.77 at 9:30 A.M. for Pleading.                                                                                                             |                  |
| 4-22-77     | Before PLATT, J - Case called. Deft & counsel present. Deft waives reading of indictment & enters plea of not guilty. Trial set down for 4-25-77 at 9:30 AM Bail continued                                                                      |                  |

(over)



| DATE    | (DOCUMENT NO.) | IV PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                | PAC | VO | V. EXCLUDABLE DELAY  |                         |             |              |
|---------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|----------------------|-------------------------|-------------|--------------|
|         |                |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |     |    | Interest Section (a) | Start Date End Date (b) | Ln Code (c) | Tot. Da. (d) |
| 4/25/77 |                | Before Platt, J-case called-deft & counsel present trial ordered & begun-jurors were selected-trial contd to 4/26/77.JLJ                                                                                                                                                                                                                                                                                                                                  |     |    |                      |                         |             |              |
| 4.26.77 |                | Before Platt, J.- Case Called. Deft. & Counsel present. Trial resumed. Deft's. motion to dismiss Count 2 argued and denied. Deft's. motion to dismiss Count 1 denied. Trial continued to 4.27.77 at 10:00 A.M.                                                                                                                                                                                                                                            |     |    |                      |                         |             | 81           |
| 4.27.77 |                | Before Platt, J.- Case Called. Deft. & Counsel present. Deft's. motion for IN CAMERA inspection of Grand Jury Minutes - Granted. Deft's. motion for further discovery - Granted. Trial resumed. Deft. rests. Deft's. motion to dismiss - denied. Govt. sums up. Deft. sums. up. Deft's. Trial continued to 4.28.77 at 9:30 A.M.                                                                                                                           |     |    |                      |                         |             | 81           |
| 4-28-77 |                | Before Platt, J - case called - deft & atty Peter Passalacqua present - trial resumed - at 2:30 PM Jury returns with a verdict of guilty on counts 1 and 2 of the indictment - sentence adjd without date - trial concluded - Jury excused. Defts motion to set aside the verdict is denied. Bail set at \$10,000 PRB to be signed by the deft and his wife and on the condition that the deft report to Pre Trial Services daily, Monday through Friday. |     |    |                      |                         |             |              |
| 4-28-77 |                | By Platt, J- Order of sustenance filed (Lunch-14 persons)                                                                                                                                                                                                                                                                                                                                                                                                 |     |    |                      |                         |             |              |
| 5/13/77 |                | Before Dooling, J-case called-deft & counsel present bail contd & extended to include E.Orange, N J.jlj                                                                                                                                                                                                                                                                                                                                                   |     |    |                      |                         |             |              |
| 6/10/77 |                | Before Platt, J-case called-deft & counsel present-the court finds that the deft was 22 years of age at the date of conviction and that there are reasonable grounds to believe that the deft will benefit from treatment under the Youth C. A.-deft is committed for treatment and supervision purs to T 18 5010(b) until discharged by the U.S. Parole Comm as provided in T.18 5017-bail contd pending appeal(Deft to report to PTS 3 times a week)jlj |     |    |                      |                         |             |              |
| 6/10/77 |                | Judgment & commitment filed. Certified copies to Marshall & probation.jlj                                                                                                                                                                                                                                                                                                                                                                                 |     |    |                      |                         |             |              |
| 6/10/77 |                | Notice of appeal filed.Certified copies of docket entries mailed to C of A.jlj                                                                                                                                                                                                                                                                                                                                                                            |     |    |                      |                         |             |              |
| 6-15-77 |                | Copy of Former filed dated 3-24-77 from U.S. Dept. of Justice, Ident. Division, Washington, DC.                                                                                                                                                                                                                                                                                                                                                           |     |    |                      |                         |             |              |
| 6-15-77 |                | Copy of Stipulation filed .                                                                                                                                                                                                                                                                                                                                                                                                                               |     |    |                      |                         |             |              |
| 6-15-77 |                | Govts requests to Charge filed.                                                                                                                                                                                                                                                                                                                                                                                                                           |     |    |                      |                         |             |              |
| 6-24-77 |                | Voucher for compensation filed and forwarded for payment.                                                                                                                                                                                                                                                                                                                                                                                                 |     |    |                      |                         |             |              |
| 6-30-77 |                | Record on appeal certified and mailed to the court of appeals.                                                                                                                                                                                                                                                                                                                                                                                            |     |    |                      |                         |             |              |
| 7/1/77  |                | Scheduling order that the record be filed on/before 7/25/77.jlj                                                                                                                                                                                                                                                                                                                                                                                           |     |    |                      |                         |             |              |

## FINE AND RESTITUTION PAYMENTS

| DATE | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
|------|----------------|-------------|------|----------------|-------------|
|      |                |             |      |                |             |
|      |                |             |      |                |             |
|      |                |             |      |                |             |
|      |                |             |      |                |             |

CURTIS R. DAVIS

A-3

77

190

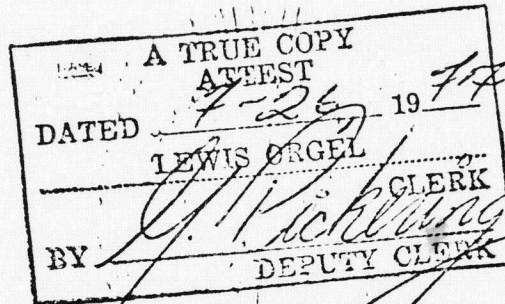
1

Yr.

Docket No.

Def.

| DATE    | PROCEEDINGS (continued)                                                                                  | V. EXCLUDABLE DELAY |     |     |     |
|---------|----------------------------------------------------------------------------------------------------------|---------------------|-----|-----|-----|
|         |                                                                                                          | (a)                 | (b) | (c) | (d) |
| 7/18/77 | (Document No.)<br>Acknowledgement from C of A for index to record on appeal and fild.jlj                 |                     |     |     |     |
| 7.25.77 | Stenographer's Transcript dated April 25th, 1977 filed.                                                  |                     |     |     | GP  |
| 7.25.77 | Stenographer's Transcript dated April 26th, 1977 filed.                                                  |                     |     |     | GP  |
| 7.25.77 | Stenographer's Transcript dated April 27th, 1977 filed.                                                  |                     |     |     | GP  |
| 7.26.77 | Supplemental Record on Appeal certified and hand delivered to the Court of Appeals by Peter Passalacqua. |                     |     |     | GP  |





UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

U. S. vs

CURTIS R. DAVIS

77  
Yr.190  
Docket No.

| DATE    | PROCEEDINGS (continued)                                                                                  | V. EXCLUDABLE |     |
|---------|----------------------------------------------------------------------------------------------------------|---------------|-----|
|         |                                                                                                          | (a)           | (b) |
| 7/18/77 | (Document No.) Acknowledgement from C of A for index to record on appeal and filed. jlj                  |               |     |
| 7.25.77 | Stenographer's Transcript dated April 25th, 1977 filed.                                                  |               |     |
| 7.25.77 | Stenographer's Transcript dated April 26th, 1977 filed.                                                  |               |     |
| 7.25.77 | Stenographer's Transcript dated April 27th, 1977 filed.                                                  |               |     |
| 7.26.77 | Supplemental Record on Appeal certified and hand delivered to the Court of Appeals by Peter Passalacqua. |               |     |
| 7.27.77 | Stenographer's Transcript dated June 10th, 1977 filed.                                                   |               |     |
| 7.27.77 | Stenographer's Transcript dated April 28th, 1977 filed.                                                  |               |     |
| 8-2-77  | 2nd supplemental record on appeal handed to Peter Passalacqua for delivery to the court of appeals.      |               |     |

A TRUE COPY ATTEST  
 7/27/77  
 LEWIS ORGEL, CLERK  
 BY *[Signature]* COPY CLERK



RJD:RGR:ma  
F. # 771,245

177 Park Ave  
C. Davis  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-- against --

CURTIS R. DAVIS,

Defendant.

----- X

THE GRAND JURY CHARGES:

INDICTMENT

Cr. No. 11CR190  
(T. 18, U.S.C., §1709)

COUNT ONE

On or about the 25th day of February, 1977 within the Eastern District of New York, while employed as a Postal Service employee, the defendant CURTIS ROOSEVELT DAVIS did embezzle twenty-one (21) City of New York, Department of Social Services checks, two (2) United States Treasury checks and one (1) State of New York Unemployment Insurance Fund check, which came into his possession intended to be conveyed by mail, one of which was addressed to Katie Rice, 197 Rockaway Avenue, Brooklyn, New York 11233. (Title 18, United States Code, Section 1709).

COUNT TWO

On or about the 25th day of February, 1977 within the Eastern District of New York, the defendant CURTIS ROOSEVELT DAVIS did unlawfully have in his possession two (2) City of New York, Department of Social Services

checks which were the contents of envelopes stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, Section 1708).

A TRUE BILL

---

FOREMAN

---

DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



## M O R N I N G   S E S S I O N

THE CLERK: United States vs. Curtis Davis.

THE COURT: Seat the jury.

(Jury seated.)

THE COURT: Good morning. I am sorry we got you all here so early and we're, apparently, not even ready at this point. What happened to Mr. Passalacqua?

(Mr. Passalacqua enters the courtroom.)

THE COURT: Come up here, gentlemen.

(Side bar.)

MR. PASSALACQUA: Your Honor, I telephoned his home. The phone rang ten or twelve times and no one responded.

THE COURT: The record should show that it is now 10:50 and the jury has been kept waiting for 20 minutes. They have all been here, and unless you have some objection I propose to proceed.

MR. PASSALACQUA: If your Honor wants to proceed with the Court's charge, I don't think my client would be prejudiced in any way. He was told to be here at 9:30, and I have to admit that as an officer of the Court, he was told to be here at 9:30, plus he comes in from Jamaica.

THE COURT: I come from Huntington.

MR. PASSALACQUA: I know.

1 THE COURT: I mean, if you have some objection  
2 I'll consider it.

3 MR. PASSALACQUA: We can wait say at least until  
4 ten o'clock, and then perhaps since he wastold to be  
5 here 10 o'clock yesterday, perhaps he forgot about the  
6 9:30 date and he is concentrating on ten. Suppose we  
7 wait until 10, and then I will have no objection to  
8 your Honor giving the jury the charge.

9 THE COURT: What do you want me to do as far  
10 as telling the jury what the reason is for the delay  
11 in sending them back into the other room?

12 MR. PASSALACQUA: I would want you to tell  
13 them the reason for the delay.

14 THE COURT: What else am I going to tell them?

15 MR. PASSALACQUA: You know, we're here and he's  
16 not here.

17 THE COURT: Do you want me to send back without  
18 any explanation?

19 MR. PASSALACQUA: They don't have to know every-  
20 thing, Judge.

21 THE COURT: I don't like to treat people that  
22 way.

23 MR. PASSALACQUA: I mean they're going inside,  
24 they'll probably have a smoke or sit around, ten minutes  
25 is not going to be --



1 THE COURT: Well, I'm not going to do it to the  
2 point where they think that this is at somebody else's  
3 instigation. I am going to say on the application of  
4 the defendant's counsel, we are going to wait another  
5 ten minutes.

6 MR. PASSALACQUA: All right, sir.

7 (End of the side bar.)

8 THE COURT: Ladies and gentlemen, the defendant's  
9 counsel has made an application to wait an additional  
10 ten minutes before commencing the charge, and I have  
11 somewhat reluctant granted that application, in view  
12 of the inconvenience that we have put you all through  
13 this morning, getting you here and requesting you to be  
14 here by 9:15, and it now being close to about 8 minutes  
15 to ten. But I think in the interest of making sure that  
16 nobody's rights are prejudiced, I must grant the  
17 application and so I will let you go back into the jury  
18 room for another five or six minutes, and then call you  
19 in again. Don't discuss the case.

20 (Jury excused.)

21 (Short recess was taken.)

22 THE COURT: All right, Mr. Passalacqua, the  
23 clock on the wall says 10 o'clock.

24 MR. PASSALACQUA: Fine, Judge.

25 THE COURT: The record should show that the  
defendant has not appeared, and that if counsel has

1           agreed that we can go ahead under these conditions, and  
2           I have requested that a Deputy Marshal stand outside  
3           the main courtroom door and if he appears, to  
4           bring the defendant in through a side door during the  
5           instructions. I take it that is satisfactory?

6           MR. PASSALACQUA: Very good, your Honor.

7           THE COURT: All bring, bring in the jury.

8           (The jury is seated.)

9           THE COURT: Ladies and gentlemen, I am going to  
10          give you the instructions on the law in this case. It  
11          is my practice to read the instructions to you. I  
12          realize that it makes it more difficult for you to  
13          follow than if I were to give them to you extemporaneously  
14          however, it does minimize the risk of error if I do  
15          read them, and so, I beg your indulgence. I recognize  
16          that it requires that you pay more attention than if  
17          I did it the other way.

18          If my voice starts to drop and you start to miss  
19          anything that I say, please let me know; call, raise  
20          your hand, waive at me or something to let me know  
21          that you are missing a portion of the charge.

22          Roughly the charge is divided into four parts--  
23          three and a half parts. The first will be some  
24          general instructions and basic principles of law in  
25          a criminal case. The second part which I will not nec-



## Instructions

562

1  
2 necessarily start by saying "Here comes the second part",  
3 but I will just go into it, and that will be a discuss-  
4 ion of the indictment and the contention of the parties.  
5 The third part will be instructions on evidence and how  
6 you are to treat evidence of various kinds, and, lastly,  
7 the remaining half part but, it isn't exactly a half  
8 part, on how to conduct yourselves as jurors when the  
9 case is given to you. I think you will recognize the  
10 portions as they come along.

11 Now that you have heard the evidence and the argu-  
12 ment of counsel, it becomes my duty to give you the  
13 instructions of the Court as to the law applicable to  
14 this case. It is your duty as jurors to follow the  
15 law as stated in the instructions of the Court, and to  
16 apply the rules of law so given to the facts as you find  
17 them from the evidence in the case.

18 You are not to single out one instruction alone  
19 as stating the law, but must consider the instructions  
20 as a whole, and neither are you to be concerned with the  
21 wisdom of any rule of law stated by the Court. Regard-  
22 less of any opinion you may have as to what the law  
23 ought to be, it would be a violation of your sworn duty  
24 to base a verdict upon any other view of the law other  
25 than that given in the instructions of the Court, just

## Instructions

563

1  
2 a s it would be a violation of your sworn duty as Judges  
3 of the facts, to base a verdict upon anything but the  
4 evidence in the case.

5 You must not permit yourselves to be governed  
6 by sympathy, bias, prejudice or any other consideration  
7 not founded on evidence and these instructions on the  
8 law.

9 Justice through trial by jury must always depend  
10 upon the willingness of each individual juror to seek  
11 the truth as to the facts from the same evidence pre-  
12 sented to all of the jurors, and to arrive at a verdict  
13 by applying the same rules of law as given in the  
14 instructions of the Court.

15 You have been chosen and sworn as jurors in this  
16 case to try the issues of fact presented by the allegat-  
17 ions of the indictment, and the denial made by the  
18 "Not guilty" plea of the accused. You are to perform  
19 this duty without bias and prejudice to any party.  
20 Again, the law does not permit jurors to be governed  
21 by sympathy, prejudice or public opinion. Both the  
22 accused and the public expect that you will carefully  
23 and impartially consider all of the evidence in the  
24 case, follow the law as stated by the Court and reach  
25 a just verdict, regardless of the consequences.



## Instructions

564

1  
2 Now, I am not going to send the exhibits which  
3 have been received in evidence with you as you retire  
4 for your deliberations. You are entitled, however, to  
5 see any or all of these exhibits as you consider your  
6 verdict. I suggest that you begin your deliberations  
7 and if it will be helpful to you, you may ask for any  
8 or all of the exhibits simply by sending a note to me,  
9 through one of the deputy marshals who will be stationed  
10 outside your jury room door.

11 Now, an indictment is but a form or method of  
12 accusing a defendant of a crime; it is not evidence of  
13 any kind against the accused.

14 There are two types of evidence from which a jury  
15 may properly find a defendant guilty of a crime. One  
16 is what we call direct evidence, such as the testimony  
17 of an eyewitness. The other is what we call circum-  
18 stantial evidence, the proof of facts and circumstances  
19 which rationally imply the existence or non-existence  
20 of other facts, because such other facts usually follow  
21 according to the common experience of mankind.

22 For example, the footprints of a man in the sand  
23 implied to Robinson Crusoe that there was another man with  
24 him on that desert island, and indeed, there was, the  
25 man Friday. On the one hand you may have direct evidence

## Instructions

565

1  
2 of an issue and, on the other hand, you may have  
3 circumstantial evidence of an issue.

4 The law does not hold that one type of evidence  
5 is necessarily of better quality than the other. The  
6 law requires only that the Government prove its case  
7 beyond a reasonable doubt, both on the direct and  
8 circumstantial evidence. At times the jury might  
9 feel that circumstantial evidence is of better quality  
10 while at other times they may feel direct evidence is  
11 of better quality. That judgment is left entirely  
12 up to you.

13 As a general rule the law makes no distinction  
14 between direct and circumstantial evidence, and  
15 simply requires that before convicting a defendant,  
16 the jury be satisfied of the defendant's guilt beyond  
17 a reasonable doubt from all of the evidence in the case.

18 Now the law presumes a defendant to be innocent  
19 of crime. Thus, a defendant although accused begins  
20 the trial with a clean slate, with no evidence against  
21 him. The law permits nothing but legal evidence presented  
22 before the jury to be considered in support of any  
23 charge against the accused. So, the presumption of  
24 innocence alone is sufficient to acquit a defendant,  
25 unless the jury is satisfied beyond a reasonable doubt



## Instructions

566

1  
2 of the defendant's guilt, after careful and impartial  
3 consideration of all the evidence in the case.

4 The burden is always upon the prosecution to  
5 prove guilt beyond a reasonable doubt. This burden never  
6 shifts to the defendant, so the law never imposes upon  
7 the defendant in a criminal case the burden or duty of  
8 calling any witnesses and producing any evidence.

9 Now a reasonable doubt does not mean a doubt  
10 arbitrarily and capriciously asserted by a juror because  
11 of his or her reluctance to perform an unpleasant task.  
12 It does not mean a doubt arising from the natural  
13 sympathy which we all have for others. It is not  
14 necessary for the Government to prove the guilt of a  
15 defendant beyond all possible doubt. If that were  
16 the rule, very few people would ever be convicted of  
17 anything. It is practically impossible for a person  
18 to be absolutely sure and convinced of any controverted  
19 fact, which, by its very nature, is not susceptible to  
20 mathematical certainty.

21 In consequence, the law says a doubt should be  
22 a reasonable doubt and not a possible doubt.

23 A reasonable doubt is a doubt based upon reason  
24 and common sense; the kind of doubt that would make  
25

## Instructions

567

1  
2 a reasonable person hesitate to act. Proof beyond a  
3 reasonable doubt must, therefore, be proof of such  
4 a convincing character you would be willing to rely  
5 and act upon it unhesitatingly in the most important of  
6 your own affairs.

7 The jury will remember that a defendant is never  
8 to be convicted on mere suspicion or conjecture.  
9 Again, a reasonable doubt means a doubt sufficient to  
10 cause a prudent person to hesitate to act in the most  
11 important affairs of his or her life.

12 The requirement of proof beyond a reasonable  
13 doubt operates on the whole case and not on the separate  
14 bits of evidence. Each individual item of evidence  
15 may not be proven beyond a reasonable doubt.

16 Now, it is charged in Count one of the indictment,  
17 that on or about the 25th day of February 1977, within  
18 the Eastern District of New York, while employed as a  
19 postal service employee, the defendant Curtis Roosevelt  
20 Davis, did embezzle 21 City of New York Department of  
21 Social Service checks two United States Treasury checks  
22 and one State of New York Unemployment Insurance Fund  
23 check, which came into his possession intended to be  
24 conveyed by mail, one of which was addressed to Katy  
25 Rice, 197 Rockaway Avenue, Brooklyn, New York, 11233,



## Instructions

568

1  
2 all in violation of Title 18, United States Code, Sec-  
3 tion 1709.

4 Now Section 1709 of Title 18 provides in pertinent  
5 part that, "Whoever being a Postal Service employee  
6 embezzles any letter or any article contained therein  
7 entrusted to him, or which came into his possession  
8 intended to be conveyed by mail, shall be guilty of an  
9 offense against the laws of the United States." You  
10 will note that the statute just read makes no reference  
11 to the value of any letter which may be embezzled. The  
12 law covers any letter intended to be conveyed by  
13 mail, regardless of whether it be of little or great  
14 value.

15 To find the defendant guilty of the crimes  
16 charged in this indictment, in the first count of the  
17 indictment, you must find beyond a reasonable doubt,  
18 first, that on or about February 25th, 1975, the  
19 defendant was a Postal Service employee. Secondly, that  
20 on or about that date, some 20 or more letters came in  
21 to the defendant's possession in the course of his  
22 job. Third, that these letters were intended to be conveyed  
23 by mail, and fourth, that the defendant unlawfully  
24 knowingly and wilfully embezzled these letters or  
25 their contents on or about the date set forth in the

## Instructions

569

1  
2 indictment.

3 Now, to embezzle a letter or other mail matter,  
4 is to wilfully take for one's own use, such  
5 mail or any other contents thereof, which belongs to  
6 another, and which came into the wrongdoer's possession  
7 lawfully, by virtue of his office, or employment or  
8 position of trust. The purpose of the law is to protect  
9 the integrity of the United States mails.

10 So, the offense charged in the indictment is  
11 complete whenever a letter or other mail matter intended  
12 to be conveyed by mail is wilfully taken or kept in  
13 the possession of a Postal Service employee, with  
14 the specific intent to misappropriate or misapply such  
15 letter or other mail matter, or any other contents there-  
16 of, to the personal use of such employee.

17 The offense is the wilfull taking or keeping of  
18 letter or mail matter, with the specific intent to  
19 misappropriate or misapply it, or any of the contents  
20 thereof.

21 In connection with Count one, or a discussion of  
22 Count one, and I will read a stipulation of facts to  
23 you that the parties have agreed to so you will under-  
24 stand what remains, what essential elements that I  
25 have just enumerated for you, and I think there were four,



## Instructions

570

1  
2 which need be proved.

3 "It is hereby stipulated and agreed by and between  
4 the undersigned attorneys for the parties herein, that  
5 21 checks recovered from the defendant, Curtis R. Davis  
6 on February 25th, 1977, were intended to be conveyed  
7 by mail and letters containing these checks were  
8 assigned and conveyed to the defendant for delivery on  
9 his mail route in the Eastern District of New York, on  
10 February 25th, 1977, and were never delivered to the  
11 addressee-payees.

12 "And it is further stipulated and agreed that  
13 the 21 letters dated February 25, 1977 recovered from  
14 the defendant, were deposited in the mail on February  
15 24th, 1977, and were intended to be conveyed by mail,  
16 and were to have been delivered by the defendant.

17 "And it is further stipulated and agreed, that  
18 one of the 21 checks recovered from the defendant,  
19 had been contained in a letter addressed to Katy Rice,  
20 197 Rockaway Avenue, Brooklyn, New York, 11233, which  
21 letter had been conveyed to the defendant for delivery  
22 on February 25th, 1977, and was never delivered to her  
23 or received by Katy Rice.

24 "And, it is further stipulated and agreed, that  
25 the two checks recovered from the rear interior of the

## Instructions

571

1  
2 defendant's automobile, had been contained in letters  
3 which were deposited in and intended to be conveyed by  
4 the mail, and were assigned and conveyed to the defendant  
5 for delivery on his mail route in the Eastern District  
6 of New York, and were never delivered to the addressees-  
7 payees.

8 "And, it is further stipulated and agreed, that  
9 the defendant, Curtis Davis, was a United States Postal  
10 Service employee and mail carrier in the Eastern  
11 District of New York, between January 1, 1977, and  
12 February 26, 1977,"

13 Now, going on to the second count of the indict-  
14 ment. It is charged in Count two that on or about the  
15 25th day of February 25, 1977, within the Eastern  
16 District of New York, the defendant Curtis Roosevelt  
17 Davis, did unlawfully have in his possession two City  
18 of New York Department of Social Service checks, which  
19 were the contents of envelopes stolen from the United  
20 States mail, the defendant knowing the same to have  
21 been stolen, all in violation of Title 18, United  
22 States Code, Section 1708.

23 Now, Section 1708 provides in pertinent part  
24 that, "Whoever steals, takes or abstracts from or  
25 out of any post office or station thereof, letter box,



## Charge

572

1  
2 mail receptacle or mail route, or other authorized  
3 depository for mail matter, or from a letter or mail  
4 carrier, shall be in violation of the laws of the United  
5 States," and further provides in pertinent part that,  
6 "Whoever buys or receives or conceals or unlawfully has  
7 in his possession any letter, postal cards, package,  
8 bag, or mail or any other article, contained therein  
9 which has been stolen, taken, embezzled or abstracted,  
10 as herein described, knowing the same to have been  
11 stolen, taken, embezzled or abstracted, is in violation  
12 or shall be in violation of the laws of the United States.

13 Four essential elements are required to be  
14 proved beyond a reasonable doubt in order to establish  
15 the offense charged in Count two of the indictment.

16 First, that the letter and the contents, or  
17 the letters and their contents referred to in the indict-  
18 ment were deposited in and sent through the mail.

19 Second, that the letters and their contents were  
20 stolen, taken, embezzled or abstracted from the mails.

21 Third, that the defendant later had the letters  
22 or the contents in his possession, and fourth, that  
23 at the time of his possession, the defendant knew the  
24 letters or the contents were stolen.

25 It is not necessary that the defendant knew that

## Charge

573

1 the letters or their contents were stolen from the mails.  
2  
3 It is necessary only that the defendant knew that the  
4 letters or their contents were stolen. Moreover, it is  
5 not necessary that the Government prove who stole the  
6 matter, or how it was stolen.

7 It is charged in Count -- I am sorry. An act  
8 is done knowingly when it is done voluntarily and  
9 intentionally and not because of mistake, accident or  
10 other innocent reason. The purpose of adding the word  
11 "Knowingly", was to insure that no one would be  
12 convicted of an act done because of mistake, accident  
13 or other innocent reason.

14 An act is done wilfully if done voluntarily and  
15 intentionally and with the specific intent to do some-  
16 thing the law forbids. That is to say, with bad  
17 purpose, either to disobey or disregard the law.

18 (The defendant enters the courtroom.)

19 (Time noted 10:20 A.M.)

20 With respect to both of the first and second  
21 counts of the indictment, the defendant claims that he  
22 was acting for and at the behest of the Postal In-  
23 spectors, and was trying to set up a buy of checks  
24 taken from the mails. For this reason he says that  
25 he cannot be said to have embezzled the checks from the



1  
2 mail or had stolen checks in his possession; i.e.,  
3 he claims that he did not have the requisite intent  
4 to commit the alleged offense. The Government, on the  
5 other hand, claimed that Postal Inspectors did not  
6 request or authorize this defendant to act in an  
7 undercover capacity or to set up a buy with checks  
8 taken from the mail. These then are the issues for  
9 you to determine in this particular case.

10 Now, there has been certain evidence introduced,  
11 essentially on the cross-examination of the defendant,  
12 with respect to other offenses committed by the  
13 defendant, with respect to two of which, as I recall,  
14 were with respect to possession of stolen goods.

15 The fact that the accused may have committed  
16 another offense at some time is not any evidence or  
17 proof whatever that at a later time the accused committed  
18 the offense charged in the indictment, even though  
19 both offenses might be said to be of a like nature.

20 Evidence as to an alleged earlier offense of  
21 a like or somewhat similar nature may not, therefore,  
22 be considered by the jury in determining whether the  
23 accused did the act charged in the indictment, nor  
24 may evidence be considered for any other purpose what-  
25 soever, unless the jury first finds that the other

## Charge

575

1  
2 evidence in the case, standing alone, establishes  
3 beyond a reasonable doubt that the accused did the  
4 act charged in the indictment, leaving aside only the  
5 question of whether he did it knowingly, and intention-  
6 ally and wilfully and not because of accident, mistake  
7 or other innocent reason.

8 If the jury should find beyond a reasonable  
9 doubt from the other evidence in the case that the  
10 defendant did the act charged in the indictment, then  
11 the jury may consider evidence as to an alleged earlier  
12 offense of a similar nature in determining motive, the  
13 state of mind, knowledge or intent with which the  
14 accused did the act charged in the indictment, and  
15 where all the elements of an alleged earlier offense  
16 of a similar nature have been established by evidence  
17 that is clear and conclusive, the jury may, but is  
18 not obliged, to draw the inference and find in doing  
19 the act in the indictment, the accused acted wilfully  
20 and knowingly and with specific intent not because of  
21 mistake, accident or other innocent reason.

22 Now there has been testimony that the defendant  
23 made a number of statements tending to show his  
24 innocence at the time of his arrest. There has also  
25 been testimony that these statements may have been



1  
2 false.

3 I charge you that if you find that exculpatory  
4 statements were made, and if you further find beyond  
5 a reasonable doubt that the same have been shown to  
6 have been false, then such statements are circumstantial  
7 evidence of the guilty consciousness and independent  
8 probative force.

9 The flight of a defendant immediately after it  
10 has been discovered that a crime has been committed is  
11 a fact which, if proved, may be introduced to prove  
12 consciousness of guilt on the part of the defendant,  
13 and may be considered and weighed by the jury in  
14 connection with all of the other evidence as to  
15 whether or not evidence of flight shows a consciousness  
16 of guilt, and the significance if any to be attached  
17 to such circumstances are matters for your determination.

18 The flight of a defendant does not create a  
19 presumption of guilt, but it is merely a fact to be  
20 considered by you, together with all of the other  
21 evidence in determining the guilt or innocence of  
22 the defendant.

23 Statements and arguments of counsel are not  
24 evidence in the case, unless made as an admission or  
25 stipulation of fact. As I indicated to you a moment

## Charge

1  
2 ago, the parties did stipulate to several facts which  
3 I read to you. When the attorneys on both sides stip-  
4 ulate or agree to the existence of a fact, you must  
5 unless otherwise instructed, accept the stipulation  
6 as evidence and regard those facts as proved.

7 The Court may take judicial notice of certain  
8 facts or events. When the Court declares that it will  
9 take judicial notice of some fact or event, you may  
10 accept the Court's declaration as evidence and  
11 regard that as proof of the fact or event that is  
12 judicially noted, but you are not required to do so,  
13 since you are the sole Judges of the facts.

14 Unless you are otherwise instructed, the evidence  
15 in the case always consists of the sworn testimony  
16 of the witnesses, regardless of who may have called  
17 them, and all the exhibits which have been received in  
18 evidence, regardless of who may have produced them,  
19 and all facts which may have been admitted or stipulated,  
20 and all facts and events which may have been judicially  
21 noted, and all applicable presumptions stated in these  
22 instructions.

23 Any evidence as to which an objection was sus-  
24 tained by the Court and any evidence ordered stricken  
25 by the Court must be entirely disregarded. Evidence



## Charge

578

1  
2 does include, however, what is brought out from witnesses  
3 on cross-examination as well as what is testified to  
4 on direct examination.

5 Unless you are otherwise instructed, anything  
6 you may have seen or heard outside of the courtroom  
7 is not evidence and must be entirely disregarded.  
8 You are to consider only the evidence in this case  
9 and your verdict is to be based upon the evidence only,  
10 but in your consideration of the evidence, you are not  
11 limited to the bald statements of the witnesses. In  
12 other words, you are not limited solely to what you  
13 see and hear as a witness testifies. You are permitted  
14 to draw from facts which you find to have been proved,  
15 such reasonable inferences as you feel are justified  
16 in the light of your experience.

17 Inferences are deductions or conclusions which  
18 reason and common sense lead the jury to draw from  
19 facts which have been established by the evidence in  
20 the case.

21 Now, if a lawyer has asked a question which  
22 contained an assertion of fact, you may not consider  
23 the assertion as evidence of that fact. The lawyer's  
24 statements are not evidence.

25 Evidence relating to any statement or act or  
omission claimed to have been made or done by a defendant



## Charge

579

1 outside of Court and after a crime has been committed,  
3 should always be considered with caution and weighed  
4 with great care, and all such evidence should be dis-  
5 regarded entirely unless the evidence in the case con-  
6 vinces the jury beyond a reasonable doubt that the  
7 statement or act or omission was knowingly made or  
8 done.

9 A statement or act or omission is knowingly made  
10 or done if done voluntarily and intentionally and not  
11 because of mistake or accident or other innocent reason.  
12 In determining whether any statement or act or omission  
13 claimed to have been made by a defendant outside of  
14 Court and after a crime has been committed was know-  
15 ingly made or done, the jury is to consider the age,  
16 sex, training, education, occupation and physical and  
17 mental condition of the defendant, and the treatment  
18 while i n custody or under interrogation as shown by  
19 the evidence in the case, and also all of the circum-  
20 stances in evidence surrounding the making of the state-  
21 ment, act or omission, including whether before the  
22 statement or act or omission was made or done, the  
23 defendant knew and had been told and understood that  
24 he was not required to make or do the act, statement or  
25 omission claimed to have been made or done by him, and



## Charge

580

1  
2 also, if he started to say something, he might stop  
3 at any time. That any statements, act or omission  
4 which he might make or do could be used against him in  
5 Court, and also that he was entitled to the assistance  
6 of counsel before making any statement, either orally  
7 or in writing or before doing any act or omission.  
8 If he was without money or means to retain counsel of  
9 his own choice, an attorney would be appointed to advise  
10 and represent him, free of cost or obligation.

11 If the evidence in the case does not convince  
12 you beyond a reasonable doubt that his statement was  
13 voluntarily made and intentionally made, you should  
14 disregard it entirely. On the other hand, if the evi-  
15 dence in the case does show beyond a reasonable doubt  
16 that this statement was, in fact, voluntarily and  
17 intentionally made by the defendant, you may consider it  
18 as evidence in the case against the defendant who  
19 voluntarily and intentionally made statements.

20 You, the jurors are the sole judges of the credi-  
21 bility of witnesses and the weight their testimony  
22 deserves. You should carefully scrutinize all of the  
23 testimony, given the circumstances under which each  
24 witness has testified, and every matter in evidence  
25 which tends to show whether a witness is worthy of

## Charge

581

1  
2 belief. Consider each witness' intelligence, motive  
3 and state of mind, and demeanor and manner while on the  
4 stand. Consider the witness' ability to observe the  
5 matters as to which he has testified, and whether he  
6 impresses you as having an accurate recollection of  
7 these matters.

8 Consider, also any relation each witness might  
9 bear to either side of the case, the manner in which  
10 each witness may be effected by the verdict, and the  
11 extent to which, if at all, each witness' is either  
12 supported or contradicted by other evidence in the case.

13 Inconsistencies or discrepancies in the testimony  
14 of a witness, or between the testimony of different  
15 witnesses, may or may not cause the jury to discredit  
16 such testimony. Two or more persons witnessing an  
17 event or a transaction or an incident, may see or hear  
18 it differently. Innocent misrecollection, like a failure  
19 of recollection, is not an uncommon experience.

20 In weighing the effect of a discrepancy, always  
21 consider whether it pertains to a matter of importance  
22 or a unimportant detail, and whether the discrepancy  
23 resulted from innocent error or intentional falsehood.  
24 After making your own judgment, you will give the testi-  
25 mony of each witness such credibility, if any, you may



1  
2 think it deserves.

3 The testimony of a witness may be discredited or  
4 impeached by a showing that he previously made state-  
5 ments which are inconsistent with his present testimony.  
6 It is the province of the jury to determine the credi-  
7 bility, if any, to be given the testimony of a witness  
8 who has been impeached.

9 If a witness is shown knowingly to have testi-  
10 fied falsely concerning any material matter, you have  
11 the right to distrust such witness' testimony in  
12 other particulars, and you may reject all of the testi-  
13 mony of that witness or give it such credibility as  
14 you may think it deserves.

15 A defendant wishing to testify is a competent  
16 witness, and the defendant's testimony is to be judged  
17 in the same way as that of any other witness. The  
18 law permits the defendant, on his own request, to  
19 testify in his own behalf.

20 The testimony of an individual defendant is  
21 before you. You must determine how far it is  
22 credible. Indeed, the personal interest that every  
23 defendant has in the result of a case should be  
24 considered in determining the credibility of his  
25 testimony.

1  
2           You are instructed that the interest creates  
3 a motive for false testimony that is, the greater the  
4 interest, the more stronger is the temptation, and  
5 that the interest of a defendant is of a character  
6 possessed by no other witness and is, therefore, a  
7 matter which may seriously affect the credence that  
8 should be given to his testimony.

9           It is the duty of the attorney on each side of  
10 the case to object when the other side offers testimony  
11 or other evidence which the attorney believes is not  
12 properly admissible. You should not show prejudice  
13 against an attorney or his client because the attorney  
14 has made objections.

15           Upon allowing the testimony or other evidence to  
16 be introduced over the objection of an attorney, the  
17 Court does not, unless expressly stated, indicate any  
18 opinion as to the weight or effect of such evidence.  
19 As stated before, the jurors are the sole judges of the  
20 credibility of all witnesses and the weight and effect  
21 of all evidence.

22           When the Court has sustained an objection to  
23 a question addressed to a witness, the jury must dis-  
24 regard the question entirely and may draw no inference  
25 from the wording or speculate as to what the witness would



## Charge

584

1  
2 have said, if he had been permitted to answer the question.  
3

4 The fact that the Court has asked one or more  
5 questions of a witness for clarification or admissibility  
6 of evidence purposes, is not to be taken by you in any  
7 way as indicating the Court has any opinion as to the  
8 guilt or innocence of the defendant in this case, and  
9 you are to draw no such inferences therefrom. That  
10 determination is up to you and to you alone, based on  
11 all of the facts in the case, and the applicable law  
12 in the instructions.

13 Now, you are here to determine the guilt or  
14 innocence of the accused from the evidence in the case.  
15 You are not called upon to return a verdict as to the  
16 guilt or innocence of any other person or persons. If  
17 the evidence in the case convinces you beyond a reason-  
18 able doubt of the guilt of the accused, you should  
19 so find, even though you may believe one or more other  
20 persons are guilty. But, if any reasonable doubt re-  
21 mains in your mind after an impartial consideration of  
22 all the evidence in the case, it is your duty to find the  
23 accused not guilty.

24 The verdict must represent the considered judgment  
25 of each juror. In order to return a verdict, it is  
necessary that each juror agree thereto.

## Charge

585

Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so, without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous, but do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember at all times, you are not partisans, you are Judges, Judges of the fact. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question, depending upon evidence presented to them. You are expected to use your good common sense, consider the evidence in the case for only those purposes for which



## Charge

586

1  
2 it has been admitted, and give it a reasonable and  
3 fair construction in the light of your common knowledge  
4 of the natural tendencies and inclinations of human  
5 beings. If the defendant is proved guilty beyond a  
6 reasonable doubt, say so. If not so proved guilty, say  
7 so.

8 You must render a verdict with respect to each  
9 of the two counts in the indictment.

10 If any reference by the Court or by counsel  
11 to matters of evidence does not coincide with your  
12 own recollection, it is your recollection which controls  
13 during your deliberations. The punishment provided by  
14 law for the offense charged in the indictment is a  
15 matter exclusively within the province of the Court and  
16 should never be considered by the jury in any way in  
17 arriving at an impartial verdict as to the guilt or  
18 innocence of the accused.

19 Now, upon retiring to the jury room, the juror  
20 seated closest to me, juror number one will act as your  
21 forelady. She will preside over your deliberations  
22 and will be your spokesman here in Court. If she  
23 elects not to do so, then you should elect a forelady  
24 or foreman from amongst your number to serve in her  
25 place.

## Charge

587

1  
2 If it becomes necessary during your deliberations  
3 to communicate with the Court, you may send a note  
4 with one of the deputy marshals who will be stationed  
5 outside the jury room door, signed by your forelady or  
6 one or more members of the jury. No member of the  
7 jury should ever attempt to communicate with the Court  
8 by any means other than a signed writing, and the Court  
9 will never communicate with any member of the jury on  
10 any subject touching the merits of the case, otherwise  
11 then in writing, or orally here in open Court.

12 You will note from an oath taken shortly by  
13 the deputy marshals that they too, as well as all other  
14 persons, are forbidden to communicate in any way or  
15 manner with any member of the jury on any subject  
16 touching upon the merits of the case.

17 Bear the following in mind, because it is very  
18 important. You are never to reveal to any person,  
19 not even to me or any member of the Court, the Court  
20 clerk or anybody else, how the jury stands numerically  
21 or otherwise on the question of the guilt or innocence  
22 of the accused, until after you have reached a unanimous  
23 verdict. In other words, do not, and I repeat, do not  
24 send me a note saying that the jury stands numerically  
25 thus for guilty or innocence of the accused.



1  
2 If you do so, we will have to discharge you and  
3 impanel another jury and retry the case, which is simply  
4 a waste of time.

5 When, as and if you reach a verdict, you send me  
6 a note saying, "We have reached a unanimous verdict."  
7 At that point I will recall you in and you will announce  
8 your verdict in open court. You don't tell me in the  
9 note what your verdict is. You advise everybody at the  
10 same time in open court.

11 If, and I hope such is not the case in this  
12 case, that you reach an impasse where you feel you are  
13 hopelessly deadlocked, you may send me a note stating,  
14 "We are hopelessly deadlocked", but again, do not  
15 tell me how you are hopelessly deadlocked for the same  
16 reason that I have indicated to you.

17 Those are the instructions of the Court. I  
18 want about five minutes, if I may, to discuss the  
19 instructions with the attorneys. I will then recall  
20 you and at that point the alternates will be discharged,  
21 and then you may begin your deliberations, but not  
22 before then.

23 In the meanwhile, during this five minute recess,  
24 don't discuss the case.

25 (Jury is excused from the courtroom.)

Charge

589

1  
2 THE COURT: All right, Mr. Nelson?

3 MR. NELSON: Your Honor, I have no objection  
4 to the charge. I don't think it varies from what you  
5 told us yesterday.

6 My only request would be that, perhaps your Honor  
7 might comment in summary upon the entrance of the  
8 defendant during the charge, so that it not be miscon-  
9 strued as in any way of having been as a result of  
10 any Governmental conduct, and I understand that it  
11 is a touchy matter, but on the other hand, I don't  
12 think that we should bear the burden. He came in,  
13 obviously with the marshal, and the inference may be  
14 drawn in some way.

15 THE COURT: The inference may also be drawn the  
16 marshal went out and got him.

17 MR. NELSON: It's possible. I just bring that to  
18 your attention.

19 THE COURT: Bear in mind, and the fact indeed,  
20 Mr. Passalacqua, he might have a request in that  
21 regard. I am not going to suggest one to him, but he  
22 might.

23 The jury was informed just prior to the charge,  
24 it was the defendant's request that it be a ten minute  
25 adjournment.



Charge

590

1  
2 MR. PASSALACQUA: I will let the matter rest,  
3 the way it is your Honor. There is no problem here.  
4 I don't know what the jury --

5 THE COURT: I am not going to grant the Government's  
6 request. I will grant it if you have any specific  
7 request that you would like to formulate, then I will  
8 consider it.

9 MR. PASSALACQUA: I have no request to make, in-  
10 sofar as the defendant appearing.

11 Now your Honor, I ask the Court to charge the  
12 jury that this defendant is presumed innocent until  
13 such time as each and every one of the jurors has found  
14 him guilty beyond a reasonable doubt, after revealing  
15 the evidence.

16 THE COURT: I think I have given that essential  
17 charge.

18 MR. PASSALACQUA: It wasn't t strong enough, your  
19 Honor.

20 THE COURT: Well, it's a standard charge that  
21 I have given in every case since I have been on the  
22 bench, and in the absence of a precharge request, I  
23 would not repeat it at this juncture.

24 MR. PASSALACQUA: Your Honor, I know your Honor  
25 inquire from the jurors at the time that they were

1 being questioned whether they would give more weight  
2 to a Government witness than to a defendant witness,  
3 but I would ask the Court to charge them that the Govern-  
4 ment witnesses have no greater weight because of their  
5 position than any of the defendants witnesses, and  
6 that is for them to decide to what extent they should--

7 THE COURT: I think I have made that clear to  
8 them heretofore, and I decline to so charge.

9 MR. PASSALACQUA: I have no other objections.

10 THE COURT: And I think my charge itself covers  
11 the point pretty clearly, because I talked about  
12 competent witnesses, and the only witness produced  
13 by the Government were the Government agents.

14 MR. PASSALACQUA: Ok.

15 MR. NELSON: I have no objection.

16 MR. PASSALACQUA: Otherwise, no objection.

17 THE COURT: All right, bring in the jury.

18 MR. PASSALACQUA: Your Honor, may I advise the  
19 Court that the defendant is sorry that he was late.  
20 He is employed and since he had not reported for work  
21 for two days because of the trial, last night he went  
22 to work and the boss insisted that he complete his  
23 full night shift, and that he was a little tardy.

24 THE COURT: I think you should have advised him  
25 that it was imperative for him to be here on time, and



1 if he wasn't here, on time, that he could have called,  
2 because the only other inference to be drawn in an  
3 absence of more than a half hour, which is true in  
4 this case, was that he wasn't intending to show.  
5 Absent the telephone call, I think that is the conclusion  
6 we all drew, and we somewhat reluctantly came to,  
7 and erroneously came to in my mind as I might say, but  
8 at the time it sure appeared that way. I don't propose  
9 to highlight that any further to the jury than it may  
10 have already been done, unless you so request it.

11 MR. PASSALACQUA: No, your Honor. I would let  
12 the matter rest.

13 THE COURT: Then bring in the jury.

14 (Jury seated.)

15 THE COURT: All right now, alternate jurors your  
16 time has come. Unfortunately, you can't sit on the  
17 deliberations of the case, because only twelve jurors  
18 may do so.

19 You do provide a valuable service. I am sure  
20 that you understand that if one or more of the jurors  
21 felt ill, or had sustained an unfortunate accident or  
22 something uncommon in the family occurred, you would  
23 have been called upon to take their place, but that  
24 didn't occur and so your services are at an end.

25 You go with the thanks of the Court for your

1 attention to this case for the past several days and  
2 your services are very much appreciated as well as  
3 needed, as I have indicated.

4 You should take your cards from Mr. Nims, pick  
5 up any clothing that you may have left in the jury room  
6 and proceed down to the Central Jury Part. I don't  
7 know whether the Clerk will have further jury work for  
8 you, but he will advise you when you get there.  
9 Thank you very much.

10 (Two alternates excused.)

11 THE COURT: All right, now, deputy marshals.  
12 Will you please step forward.

13 (Courtroom deputy swears in two marshals.)

14 THE COURT: All right, now jurors, you may dis-  
15 cuss the case.

16 (The jury is excused; time approximate 10:45 A.M.)

17 THE COURT: Mr. Passalacqua, do you have any  
18 exhibits?

19 MR. NELSON: I have them here, your Honor.  
20 I gave the pictures to the marshal so that he could  
21 identify -- oh no, I have them here.

22 THE COURT: You had some exhibits?

23 MR. PASSALACQUA: I believe so.

24 MR. NELSON: You have marked three photographs  
25 and I have them here.



1 THE COURT: Leave them with Mr. Nims.

2 Now, what I would propose to do, if they just write  
3 and ask for an exhibit or a copy of the indictment, I  
4 will not assemble you here, but I will just send them  
5 in.

6 MR. PASSALACQUA: Right.

7 THE COURT: If you all agree upon what the exhibits  
8 are. Secondly, if they haven't reached a verdict by  
9 twelve o'clock, I will ask Mr. Nims to take luncheon  
10 orders from them, in order words to send out for lunch  
11 orders and instruct them at that time that I am going  
12 to let the attorneys go to lunch between one and two,  
13 so that they must send any of their inquiries in either  
14 before or after 2 o'clock.

15 MR. PASSALACQUA: Right.

16 MR. NELSON: Your Honor, just in regard to the  
17 tape. I assume that the transcripts cannot be taken  
18 into the jury room.

19 THE COURT: They cannot be taken in.

20 MR. NELSON: If they want them to be here--

21 THE COURT: We will get them in here and replay  
22 it.

23 All right, gentlemen see you later.

24 (The Court recessed.)

25 (Time approximately 11:40 A.M.)

1 THE COURT: Gentlemen, they have sent me a note  
2 which says, "We would like to see the stipulation between  
3 the attorneys on Count two". It pertains to both  
4 counts. I assume we will send the entire stipulation  
5 in, in as it pertains to both counts, and tell them so,  
6 and the tape recording now, they can't see the tape  
7 recording, but if they want the whole thing replayed,  
8 we will do it if they want it replayed.

9 MR. NELSON: Fine.

10 I called Inspector Rowan and he should be coming.

11 THE COURT: All right, bring in the jury and  
12 mark this note.

13 THE CLERK: Court exhibit one, jury note marked.

14 (Jury seated.)

15 THE COURT: Ladies and gentlemen, I have your  
16 note signed by your forelady and first you asked for  
17 the stipulations between the attorneys as to Count two.  
18 The stipulation actually pertains to both counts, and  
19 I think the last two paragraphs -- yes, the last two  
20 paragraphs pertain to Count two, but I will send the  
21 entire stipulation in with you via the marshals.

22 The second thing you asked for is that you  
23 would like to see the tape recording.

24 Now, if you recall I said to you the transcript  
25 of the tape was marked for identification, only to be



1 used as a guide as to what you knew you heard on the  
2 tape itself, so that if you want anything from the  
3 tape recording, it must be replayed to you. If you  
4 want the entire matter played, you may have the entire  
5 amount replayed. If you want only a portion of it, you  
6 should so indicate that to me, and that is the only  
7 way you can have the tape recording, and it must be  
8 replayed here in Court.

9 Do you know Madam Forelady, do you wish the  
10 entire thing to be replayed or just have a portion of  
11 it?

12 THE FORELADY: Just a portion of it.

13 THE COURT: Would you delineate in writing,  
14 what portions very quickly and let me know?

15 THE FORELADY: Yes.

16 THE COURT: Can you tell me verbally what  
17 portions?

18 THE FORELADY: Can I discuss it?

19 THE COURT: You better discuss it out there and  
20 then come back.

21 (Jury excused.)

22 THE COURT: We don't want them deliberating  
23 here in Court, that's for sure.

24 MR. NELSON: Your Honor, since the jury has  
25 stated that it wishes to hear portion of the case, I

1 would propose that they be given the opportunity again  
2 to have the transcript with them to aid them in hearing  
3 the tape.

4 MR. PASSALACQUA: I object.

5 The tape is in evidence, and let them make out  
6 the clarity as they feel --

7 THE COURT: I think it is only proper, particularly  
8 in this case, where there is at least in the first  
9 portion of the testimony that pertains to McDonald's,  
10 the encounter inside McDonald's where the music was  
11 playing, there are some questions of audibility.  
12 I don't think that they ought to have the entire  
13 transcript. With respect to the latter portions, I  
14 think it is perfectly audible and I would be inclined  
15 to just let them hear that at this juncture, and if  
16 they request the transcript, that will be denied.  
17 If they request the transcript and it pertains to  
18 other matters, I will cross that bridge when I get  
19 there.

20 MR. NELSON: Will you inquire as to whether  
21 they wish them as guides?

22 THE COURT: No, I will leave that burden entirely  
23 up to them.

24 MR. NELSON: Your Honor, I would just like to  
25 say that I think --



1 THE COURT: I think that this is a proper rule  
2 that is the way I have done it in the past.

3 MR. NELSON: I leave that up to your Honor.  
4 I am making the motion that they be permitted to  
5 listen to the tapes and have the transcripts aswell.

6 THE COURT: I will if they ask for it.

7 MR. NELSON: If you deem otherwise ---

8 THE COURT: I said that I would if they asked for it

9 MR. NELSON: I think since they have been instructed  
10 I don't think that they would give any undue weight  
11 to the transcript, and I don't see, since they're in  
12 their deliberations that it should make any difference.

13 THE COURT: It's one thing to read it through  
14 the first time, listening, and think when they did it  
15 I advised them not to start reading until they heard  
16 it played and until they could pick up what they could  
17 hear. They didn't have to pay any attention to what  
18 they read. The second time if they had it it could  
19 start to make an impression on their minds, what  
20 they read as opposed from what they hear.

21 I am very troubled --

22 I am not very troubled, but I am troubled about  
23 doing it, as to the first portion of the conversations  
24 in McDonald, one varies very possibly some audibility.  
25 question.

1 MR. NELSON: Let me ask you this, your Honor;  
2 if they were to come back and speculate for a moment  
3 and say that we only wish to hear the last twenty  
4 sentences, of course, which were all outside of the  
5 McDonald's, would you then be able to give them the  
6 transcript?

7 THE COURT: If they asked for it --

8 MR. NELSON: But you wouldn't inquire as to  
9 whether they wished it?

10 THE COURT: No. I think that is a fair way to  
11 deal with it.

12 MR. PASSALACQUA: That is right, why should the  
13 Judge give them anything else, let them ask for it.  
14 They're swell people there.

15 THE COURT: They are intelligent. I have the  
16 note here which says, "We would like to hear the  
17 last two minutes of the last portion of the tape".

18 MR. PASSALACQUA: Well, sometimes the last  
19 two minutes --

20 MR. NELSON: They didn't want to equivocate,  
21 at all. They want it very clearly.

22 MR. PASSALACQUA: The last two minutes?

23 MR. NELSON: We will have the agent figure out  
24 about two minutes worth.

25 THE COURT: Will you take his estimate?



1 MR. PASSALACQUA: What was that?

2 THE COURT: Will you take his estimate as to  
3 how long the total tape is, from the time to where they  
4 played it, would you say that it was about ten minutes?

5 MR. NELSON: I would say ten minutes, that is my  
6 recollection.

7 THE COURT: Let me see.

8 I have the transcript and maybe the agent and I  
9 and you and I Mr. Passalacqua can do it. If the tape  
10 is a ten minute tape, --

11 THE COURT: Jury note marked exhibit 2.

12 MR. PASSALACQUA: Ten minutes would be from the  
13 time to where we start at 0982 .

14 THE COURT: Nine pages in total.

15 MR. NELSON: They want two pages worth.

16 THE COURT: I would say that we ought to give  
17 them at least that, that's two minutes.

18 MR. NELSON: Which is more than two minutes.

19 THE COURT: Two minutes, yes. We will give them  
20 two pages worth, starting at about 1397.

21 MR. NELSON: Right, we have been starting at 1384  
22 so that there is no question, your Honor.

23 MR. PASSALACQUA: Wait a while.

24 THE COURT: Is that agreeable?

25 MR. PASSALACQUA: There may be something in there,

1 he is talking about hot cars and credit cards.

2 THE COURT: They didn't ask for that.

3 That is on page 9.

4 MR. NELSON: Take your pick, Mr. Passalacqua;  
5 1384 to 1397, is that ok?

6 THE COURT: I think that is fair; 1384 on;  
7 can you just give us that?

8 MR. NELSON: Yes.

9 Agent Rowan advises me that the meter has adjust-  
10 ability, so let him just start it and listen to it just  
11 to make sure that we are at the right spot?

12 THE COURT: All right. Let's bring in the jury.

13 (The jury seated.)

14 THE COURT: You certainly gave us a tall order.  
15 You asked for the last two minutes and we have done our  
16 best to estimate what that means. If it doesn't mean what  
17 you think it means when you have heard it, you will  
18 have to come back and ask for whatever you want to hear,  
19 but this is our best estimate of what the last two  
20 minutes are.

21 (Tape played in the courtroom.)

22 THE COURT: All right, thank you. The jury can  
23 be excused.

24 (Jury leaves the jury box.)

25 THE COURT: Ok, gentlemen, I will proceed with my



1 hearing. Just stay available.

2 (Matter is recessed at 11:58 P.M.)

3 (Time approximately 2:25 P.M.)

4 THE COURT: Let's bring the jury in.

5 MR. PASSALACQUA: Do we have a note from the  
6 jury, or is it just the verdict?

7 THE COURT: They have a verdict.

8 MR. NELSON: It is a verdict?

9 THE COURT: Yes.

10 Now, bring in the jury please.

11 (Jury seated in the jury box.)

12 THE COURT: Madam Forelady, I understand from  
13 your note that you have reached a unanimous verdict  
14 with respect to both counts of the indictment. If  
15 that be the case, would you kindly rise and answer the  
16 questions of Mr. Nims, the clerk, as he poses them to  
17 you.

18 (Forelady rises.)

19 THE CLERK: Madam forelady, ladies and gentlemen  
20 of the jury; have you agreed upon a verdict?

21 THE FORELADY: Yes,

22 THE CLERK: How do you find the defendant,  
23 Curtis Davis, on Count one of the indictment?

24 THE FORELADY: Guilty.

25 THE CLERK: And how do you find the defendant,

1 Curtis Davis, on Count two of the indictment?

2 THE FORELADY: Guilty.

3 THE CLERK: Ladies and gentlemen of the jury,  
4 the Court has received your verdict. You say that you  
5 find the defendant Curtis Davis guilty on Count one of  
6 the indictment, and that you find the defendant Curtis  
7 Davis guilty on Count two of the indictment; and so  
8 say you all?

9 (Jury nods.)

10 THE COURT: Now, Madam Forelady, would you be  
11 seated and I will ask the Clerk to poll the jury.  
12 The jury may remain seated and need not rise in answering  
13 the questions; just answer them yes or no.

14 THE CLERK: Ladies and gentlemen of the jury,  
15 you have heard your verdict as the Court has received it.  
16 Juror Number one, is that your verdict?

17 JUROR NUMBER ONE: Yes.

18 THE CLERK: Juror Number two, is that your  
19 verdict?

20 JUROR NUMBER TWO: Yes.

21 THE CLERK: Juror Number three, is that your verdict?

22 JUROR NUMBER THREE: Yes.

23 THE CLERK: Juror Number four, is that your  
24 verdict?

25 JUROR NUMBER FOUR: Yes.



1 THE CLERK: Juror Number five is that your  
2 verdict?

3 JUROR NUMBER FIVE: Yes.

4 THE CLERK: Juror Number six is that your verdict?

5 JUROR NUMBER SIX: Yes.

6 Juror Number seven, is that your verdict?

7 JUROR NUMBER SEVEN: Yes.

8 THE CLERK: Juror Number eight, is that your  
9 verdict?

10 JUROR NUMBER EIGHT: Yes.

11 THE COURT: Juror Number nine, is that your ver-  
12 dict?

13 JUROR NUMBER NINE: Yes.

14 THE CLERK: Juror Number ten is that your verdict?

15 JUROR NUMBER TEN: Yes.

16 THE CLERK: Juror Number eleven, is that your  
17 verdict?

18 JUROR NUMBER ELEVEN: Yes.

19 THE CLERK: Juror Number twelve is that your  
20 verdict?

21 JUROR NUMBER TWELVE: Yes.

22 THE COURT: So say you all?

23 (Jury nods).

24 THE CLERK: The jury is polled your Honor.

25 THE COURT: Thank you.

1           Now, ladies and gentlemen, I just want to say  
2 one word before I let you go, and that is among other  
3 things, thank you for your consideration of this case  
4 and for the effort that you have bestowed upon the  
5 case. I realize that it is very difficult to sit in  
6 judgment on any one of these cases, especially in a  
7 criminal case, which is not an easy job. I think that  
8 anyone who hasn't done it doesn't realize how difficult  
9 a job it is.

10           You have been representing, whether or not you  
11 realize it, some eight million people in the Eastern  
12 District of New York and you have been called upon  
13 to do your duty by your constituents, and you have  
14 performed it, and I believe you have performed it very  
15 conscientiously and well. You go with the thanks of  
16 the eight million other people in this district, as  
17 well as, of course, the thanks of the Court for your  
18 services which you have rendered.

19           You should check out downstairs with the  
20 Central Jury Part, make sure that they have no jury  
21 service for you today or the balance of the evening.  
22 I don't know whether this ends your term or not, but  
23 if it doesn't, then you may have another bit of service  
24 next week. Thank you very much.

25           (Jury excused.)



1 THE COURT: Now, Mr. Passalacqua, will you please  
2 have the defendant come forward.

3 (Mr. Passalacqua and the defendant approach  
4 the bar.)

5 MR. PASSALACQUA: I move for setting aside of  
6 the verdict, as being contrary to the weight of the  
7 credible evidence.

8 THE COURT: Your motion is denied.

9 How old are you, Mr. Davis?

10 MR. DAVIS: 23 years of age.

11 THE COURT: Well, Mr. Davis, you may be eligible  
12 for Youth Correction Act treatment. You should  
13 consider this question and you should discuss it with  
14 your lawyer and with the Probation Department. I say,  
15 you may, in view of your record, which was brought out  
16 during the trial. I am not sure that you may be entitled  
17 to the Youth Correction Act treatment; in any event,  
18 it will be in my discretion, but you certainly should  
19 discuss the question with both your attorney and with  
20 the presentence officer who will make his presentence  
21 investigation, write a report and you will be entitled  
22 to see copies of that report as well as your counsel,  
23 before sentence will actually be imposed.

24 What is the bail here?

25 MR. NELSON: Well, your Honor ---

1 MR. PASSALACQUA: What kind of bail are you on,  
2 personal recognizance bond?

3 MR. DAVIS: Yes.

4 MR. PASSLACQUA: How much?

5 MR. DAVIS: \$5,000.00.

6 MR. NELSON: Your Honor, I would leave this en-  
7 tirely within your discretion, but I would point out  
8 again, the defendant has been found guilty. There are  
9 many criminal acts and there have been prior cases as  
10 resisting arrest. With regards to the matter of the  
11 defendant's age, that is something that I don't think any  
12 of us know for sure, even at this point in time know,  
13 so I would ask for a higher bail, your Honor, sub-  
14 stantially high.

15 MR. PASSALACQUA: Your Honor, the fact remains  
16 that this man has been in the Armed Services, got an  
17 Honorable Discharge. The fact remains that he is married,  
18 his wife works right next door here in the New York  
19 State Supreme Court in the library. The facts show  
20 that this man has a job, he is working nights, now here  
21 is a man that knows responsibility and - is working  
22 and is able to get himself a job. Surely he has had  
23 some sort of brush with the law, but that doesn't mean  
24 that he has ever been a fugitive or anything else.  
25 Where is the man going to go; he's got a wife and a job,



1                   They have an apartment and they live together.  
2                   There is no danger here.

3                   MR. NELSON: Your Honor, I might mention and I  
4                   think I mentioned this to you briefly, there is a ques-  
5                   tion as to whether there are outstanding warrants as  
6                   to Mr. Davis now. We have a photograph of a person for  
7                   which there are outstanding warrants and it bears a  
8                   striking resemblance to the defendant, although I would  
9                   not say that it is the defendant definitely, and if  
10                  you would like to see the photograph --

11                  THE COURT: I think perhaps I should, I would  
12                  like to have information, whatever information you do  
13                  have on these outstanding warrants. Has this man ever  
14                  been before the Pretrial Service Agency?

15                  MR. PASSALACQUA: Yes.

16                  THE COURT: I presume then they don't have a  
17                  record on him. Do you know what pretrial officer had  
18                  charge of the case?

19                  MR. PASSALACQUA: Do you know the name of the  
20                  gentleman?

21                  MR. DAVIS: No, I don't.

22                  THE COURT: Your record should indicate that I  
23                  have advised the defendant of his rights with respect  
24                  to the YCA, and I suggest that they discuss it with  
25                  his attorney. I should say his potential rights with

1 respect to the YCA. Is this the record, all these five  
2 pages?

3 MR. NELSON: Yes, your Honor.

4 THE COURT: How many warrants are allegedly  
5 outstanding?

6 MR. NELSON: Seven, I am not really sure, your  
7 Honor. I hadn't looked at it in detail, because I was  
8 not sure that it was the defendant and it was not going  
9 to be presented at trial for that very reason.

10 Perhaps you could inquire of the defendant, ask  
11 him if that is the same person?

12 MR. DAVIS: I would like to say --

13 THE COURT: I think he has got Fifth Amendment  
14 privileges in other Courts and he may even have them  
15 here if he is going to take an appeal, so I would be  
16 inclined to feel that this was not quite right. How-  
17 ever, there would be nothing to prevent his counsel  
18 from asking him with respect to this, because I really  
19 don't know, Mr. Passalacqua--

20 MR. PASSALACQUA: Is there any doubt in the  
21 court's mind about this defendant appearing here  
22 again?

23 THE COURT: There is some doubt in my mind.  
24 There are several warrants outstanding.

25 MR. PASSALACQUA: I don't know anything about



1 these warrants; your Honor. May we look at them?

2 THE COURT: Yes, maybe you better; You have  
3 no objection if I show them to Mr. Passalacqua?

4 MR. NELSON: No, I have no objection.

5 MR. PASSALACQUA: Is this you?

6 THE WITNESS: No, that's not me.

7 MR. PASSALACQUA: Obviously, it is not him, even  
8 by my humble investigation, it tells me that it is not  
9 him.

10 THE COURT: Do you want him to take the witness  
11 stand?

12 MR. PASSALACQUA: Sure, he will take the witness  
13 stand. In my opinion, it's definitely not him.

14 THE COURT: Well, apparently, the agents have  
15 some concern that it may be him,

16 MR. NELSON: As I understand it, your Honor, the  
17 way that this photograph was brought in, it was because  
18 the person appearing in the photograph, as I understand  
19 correctly, used the name Curtis Davis; is that true?

20 MR. ROWAN: That's what I understand.

21 THE COURT: Well, why can't we solve the problem  
22 by notifying the authorities.

23 MR. NELSON: And then we can compare the finger-  
24 prints.

25 THE COURT: Yes.

1 MR. NELSON: That's what we propose to do your  
2 Honor because of the difference in birth dates and  
3 Social Security numbers, it has been rather ---

4 MR. PASSALACQUA: Your Honor, if I look in the  
5 telephone directory I will probably see a million Davis'.

6 THE COURT: And probably four hundred Curtis  
7 Davis;.

8 MR. PASSALACQUA: Of course, for crying out loud.

9 THE COURT I think I have had three Curtis Davis'  
10 defendants, which this is only one right now.

11 MR. PASSALACQUA: Look at this rap sheet. This  
12 is certainly not him. The Post Office never would have  
13 accepted him if they fingerprinted him when he became  
14 a casual carrier.

15 MR. NELSON: By that logic, your Honor, they  
16 would have known about the prior convictions that we  
17 mentioned at the trial and his prior Postal Service.

18 MR. PASSALACQUA: How do you know?

19 They don't know about his prior convictions;  
20 even if they didn't, they were remiss in their duty  
21 if they fingerprinted him that they did not follow  
22 through with it.

23 MR. NELSON: I don't want to argue.

24 THE COURT: There is no argument on this.

25 MR. PASSALACQUA: I am trying to handle this;



1           these are just ridiculous remarks.

2           THE COURT: I think one possible solution to this  
3           would be to have his wife sign the personal recognizance  
4           bond, the unsecured bond along with him, his wife has  
5           a fairly good job.

6           MR. NELSON: Well, your Honor, if that be the  
7           case I then suggest it be of a very substantial amount,  
8           we have testimony that the two of them earned six hundred  
9           dollars bi-weekly take home pay for a certain amount of  
10          time, which I apparently gather was within the last year  
11          or two. If that testimony is to be believed, then these  
12          people have earned quite a substantial bit of money  
13          and they can then afford it, he and his wife can afford  
14          to sign a very substantial bond.

15          MR. PASSALACQUA: Your Honor inquired of the  
16          defendant, can you inquire of him if he has any  
17          bank accounts here?

18          THE COURT: I am not going to ask him questions  
19          Mr. Passalacqua. I think that it is improper for me  
20          to ask him questions at this juncture. I have no  
21          objection to your asking him and making those representat-  
22          ions to the Court.

23          MR. PASSALACQUA: I will ask him your Honor now.

24          THE COURT: Fine.

25          MR. PASSALACQUA: Do you have a savings account?

1 MR. DAVIS: Yes, I do.

2 MR. PASSALACQUA: How much do you have in your  
3 savings account?

4 MR. DAVIS: About two hundred dollars.

5 MR. PASSALACQUA: Do you have any other bank  
6 accounts, checking or savings?

7 MR. DAVIS: Savings account.

8 MR. PASSALACQUA: That's one.

9 THE COURT: Or does his wife?

10 MR. DAVIS: I have a checking and savings.

11 MR. PASSALACQUA: How much in the checking?

12 MR. DAVIS: Checking Two hundred dollars.

13 MR. PASSALACQUA: What's the saving account?

14 MR. DAVIS: About \$20.00.

15 MR. PASSALACQUA: That's all. Do you have any  
16 stocks, bonds?

17 MR. DAVIS: No.

18 MR. PASSALACQUA: Do you have a car?

19 MR. DAVIS: Yes.

20 MR. PASSALACQUA: Is it completely paid for?

21 MR. DAVIS: Yes.

22 MR. PASSALACQUA: What's the year of the car?

23 MR. DAVIS: 69 Chrysler.

24 MR. PASSALACQUA: Do you think it has a book value;  
25 what can you get for a car if you want to sell it?



1 MR. DAVIS: Four hundred.

2 THE COURT: About a hundred.

3 MR. PASSALACQUA: '69 --

4 THE COURT: What does his wife have, if anything?

5 MR. PASSALACQUA: How about your wife; what does  
6 she make?

7 MR. DAVIS: Not that much.

8 MR. PASSALACQUA: About how much does she make?

9 MR. DAVIS: I am not sure.

10 MR. NELSON: There was testimony at trial --

11 THE COURT: I have a pretty good idea what she  
12 makes, based on what I heard and what is in the pre-  
13 trial service report.

14 What is it presently, a \$5,000.00 bond unsecured?

15 MR. NELSON: \$5,000 personal recognizance bond.

16 THE COURT: I will release him pending sentencing  
17 \$10,000.00 bond unsecured bond, to be signed by both  
18 himself and his wife, and on the condition that he  
19 report in at least once a day during the work days,  
20 Monday through Friday by telephone or in person as  
21 the pretrial officer shall direct, for the next six  
22 weeks, pending his sentencing. I will leave that to  
23 the discretion of the Pretrial Services Agency as  
24 to how they want him to report, but I want him to check  
25 in at least that often.

1 In the event there is some violation of a cond-  
2 ition, or at the discretion of the Pretrial Services  
3 Officer during this period, the bail will be  
4 immediately revoked and he will be remanded. I made  
5 it once a day because as soon as you find that there  
6 are any warrants outstanding you can communicate with  
7 the Pretrial Services Agency and have people here and  
8 make him available to whose ever warrant is outstanding  
9 for him.

10 MR. NELSON: Yes, your Honor.

11 It just occurred to me and I am not disagreeing  
12 with the provisions your Honor has set forth, but there  
13 was some mention on the tape again of \$3400 in Social  
14 Security money, and the first of the month. Now,  
15 that was a bit ambiguous, I must admit, but I just  
16 wonder if that shouldn't be a consideration to the  
17 Court, although there is no money mentioned in his  
18 account, that may be for a good reason.

19 THE COURT: I don't know what the answer is to  
20 that Mr. Nelson, but as far as that may be for a good  
21 reason.

22 THE COURT: I don't know what the answer is to  
23 that Mr. Nelson, but as far as that goes, he has roots  
24 here; he has his wife who has a good job and he has  
25 a job. I would be hesitant to take his job away from



1 him by locking him in jail during this period.

2 MR. NELSON: I am not asking that, your Honor.

3 THE COURT: I don't suspect his wife is going to  
4 let him go anyway, and if it is likely to cost her  
5 her job, or a good slice of her salary, so I don't  
6 think that is probable and I think that it is a pretty  
7 safe debt.

8 MR. PASSALACQUA: All right, your Honor. Can we  
9 make provision to have his wife come in to have her  
10 sign it downstairs, it's kind of late now to get her  
11 here.

12 THE COURT: She is right next door.

13 MR. PASSALACQUA: What are we going to do, drag  
14 her out of the job?

15 THE COURT: She can come in here before 6 o'clock  
16 tonight, that can be arranged.

17 She gets out at five and she can be here by  
18 six and then sign the bond; it will take ten minutes.

19 MR. PASSALACQUA: Ok.

20 THE COURT: Is that agreeable to you?

21 REPRESENTATIVE OF THE PRETRIAL SERVICES AGENCY:

22 Yes.

23 THE COURT: All right, thank you.

24 \* \* \* \* \*

25

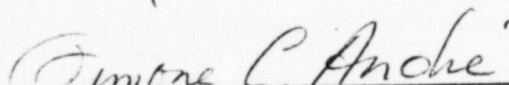
STATE OF NEW YORK )  
COUNTY OF NEW YORK )

AFFIDAVIT OF SERVICE BY MAIL

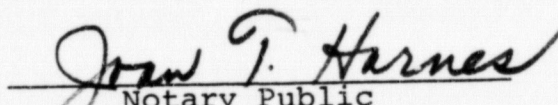
SIMONE C. ANDRE, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 333 East 53rd Street, New York, New York 10022.

That on the First Day of September, 1977 deponent served a true copy of the within Defendant-Appellant's Appendix upon the attorney listed below in this action at the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

DAVID G. TRAGER, Esq.  
United States Attorney  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York

  
Simone C. Andre

Sworn to before me  
this 1st of September, 1977

  
Notary Public

JOAN T. HARNES  
Notary Public, State of New York  
No. 31-6774449  
Qualified in New York County  
Commission Expires March 30, 1978